



BancBoston Leasing

RECORDATION 15844-A

NOV 16 1988 - 10 40 AM

INTERSTATE COMMERCE COMMISSION

November 14, 1988

The Honorable Noretta R. McGee
Secretary
Interstate Commerce Commission
12th Street and Constitution Avenue, NW
Washington D.C. 20423

8-321A050
NOV 16 1988

Date

Fee \$

13.00

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OFFICE OF THE
SECRETARY
MOTOR OPERATING UNIT

Dear Ms. McGee:

ICC Washington, D.C.

We have enclosed one original and one certified copy of the secondary document described below to be recorded pursuant to Section 11303 of Title 49 of the United States Code:

Limited Guaranty by Genessee and Wyoming Industries, Inc. in favor of BancBoston Leasing Inc.

The primary document to which this is connected is recorded under Recordation number 1 5844.

The secondary document is a Limited Guaranty. The names and addresses of the parties to the document are as follows:

Lessee: GWI Leasing Corporation
71 Lewis Street
Greenwich, Connecticut 06830

Lessor: BancBoston Leasing Inc.
100 Federal Street
Boston, Massachusetts 02110

Guarantor: Genessee & Wyoming Industries, Inc.
71 Lewis Street
Greenwich, Connecticut 06830

A description of the equipment covered by the document follows:

- (384) 100 ton lined, covered hopper cars;
- (122) 100 ton Eastern coal open-top hopper cars;
- (25) all steel plain box cars;
- (9) EMD Locomotives;
- (2) ALCO Locomotives.

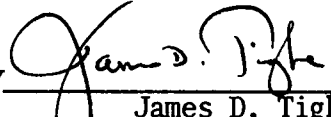


A fee of \$13.00 is enclosed. Please return the original document after recordation to BancBoston Leasing Inc., 100 Federal Street, Boston, Massachusetts 02110.

A short summary of the document to appear in the index follows:

LIMITED GUARANTY; Guaranty, dated as of September 28, 1988, by Genesee & Wyoming Industries, Inc., a Delaware corporation with its principal place of business at 71 Lewis Street, Greenwich, Connecticut 06830 (the "Guarantor"), in favor of BancBoston Leasing Inc., a Massachusetts corporation, with its principal place of business at 100 Federal Street, Boston, Massachusetts 02110 (the "Lessor").

Very truly yours;
BancBoston Leasing Inc.

By 
James D. Tighe
Assistant Vice President

Enclosures: (2) Limited Guaranty (One Original and One Certified Copy)

15844-A
RECORDED AT 15844-10
NOV 16 1988 - 10 42 AM
INTERSTATE COMMERCE COMMISSION

LIMITED GUARANTY

GUARANTY, dated as of September 28, 1988, by Genesee & Wyoming Industries, Inc., a Delaware corporation with its principal place of business at 71 Lewis Street, Greenwich, Connecticut 06830 (the "Guarantor"), in favor of BancBoston Leasing Inc., a Massachusetts corporation, with its principal place of business at 100 Federal Street, Boston, Massachusetts 02110 (the "Lessor"). In consideration of Lessor's entering into a Master Lease Agreement dated as of September 28, 1988 (together with all riders and schedules thereto, the "Lease Agreement") and the Railcar and Locomotive Purchase Agreement dated as of September 28, 1988 (the "Purchase Agreement") with GWI Leasing Corporation (together with its successors, the "Lessee") and because the Guarantor will benefit from leasing the equipment described in such Lease Agreement (the "Equipment"), the Lessee, the Guarantor agrees as follows:

1. GUARANTY OF PAYMENT AND PERFORMANCE. The Guarantor hereby guarantees to the Lessor the full and punctual payment when due (whether at maturity, by acceleration or otherwise), and the performance by the Lessee of all liabilities, indemnities, agreements and other obligations under the Lease Agreement and the Purchase Agreement with the Lessor, and under any document executed in connection therewith, whether direct or indirect, primary or secondary, absolute or contingent, due or to become due, secured or unsecured, now existing or hereafter arising or acquired (the "Obligations") and which Obligations shall be limited to a monetary amount set forth on Exhibit A attached hereto (the "Obligation Amount") for the date on which the liability of the Guarantor hereunder is determined in accordance with the terms of Section 3 below. The Guarantor also guarantees to the Lessor that the Lessee will perform, in all respects, strictly in accordance with the terms of the Lease Agreement and the Purchase Agreement. This Guaranty is an absolute, unconditional and continuing guaranty of the full and punctual payment and performance of the Obligations and not of their collectability only and is not conditioned upon the Lessor's pursuing any remedies against the Lessee or resorting to any security or other means of obtaining payment, except as specifically set forth in Section 3 below. If the Lessee defaults in the payment or performance of any of the Obligations, the obligations of the Guarantor under this Guaranty shall become due and payable to the Lessor as set forth in Section 3 below. Payments by the Guarantor hereunder may be required by the Lessor on any number of occasions.

2. GUARANTOR'S AGREEMENT TO PAY. The Guarantor further agrees, as the principal obligor and not as a guarantor only, to pay to the Lessor, on demand, all costs and expenses (including court costs and legal expenses) incurred or expended by the Lessor in connection with the Obligations, this Guaranty and the enforcement thereof, together with interest on amounts recoverable under this Guaranty (excluding, however, any penalty interest accruing pursuant to the Lease Agreement after the date the Lessor demands payment hereunder), from the time such amounts become due until payment, at the rate per annum equal to 18% or, if higher, the rate of interest announced, from time to time, by The First National Bank of Boston, (the "Bank of Boston") at its head office as its Base Rate, plus 4%; provided that if such interest exceeds the maximum amount permitted to be paid under applicable law, then such interest shall be reduced to such maximum permitted amount.

3. LIMITED GUARANTY. The liability of the Guarantor hereunder shall be determined in the following manner. Upon an Event of Default under the Lease Agreement, the Lessor shall promptly exercise its rights under the Lease Agreement to repossess or to replevin the Equipment. If the Lessor is reasonably able to repossess or to replevin the Equipment, or any portion thereof (the "Repossessed Equipment"), the Lessor shall use its good faith best efforts to sell the Repossessed Equipment provided, however, that the Lessor shall not effect any sale until ninety (90) days shall have elapsed from the date of the Event of Default. The Lessor shall advise the Guarantor, in writing, of the highest price offered by any third party to purchase the Repossessed Equipment and the Guarantor shall, at that time, have the right to elect to purchase the Repossessed Equipment for the price and on the same terms and conditions as stated in such offer provided, however, that as a condition of such right (i) the Guarantor shall also agree to purchase any Equipment which the Lessor has been unable to repossess or to replevin for an amount equal to the fair market value of such Equipment (the "Fair Market Value"), such Fair Market Value to be determined in the manner set forth in Section 13 of the Lease Agreement, and (ii) the Guarantor shall demonstrate its financial capacity and ability (A) to purchase all Equipment leased to the Lessee and (B) to pay all amounts due under this Guaranty on the date such amounts are demanded hereunder. The total purchase price of the Repossessed Equipment and the Fair Market Value of the remaining Equipment shall constitute proceeds (the "Proceeds") for purposes of this Guaranty. In the event the Guarantor elects not to purchase the Equipment pursuant to this Section, the amount received by the Lessor from any third party from the sale of the Repossessed Equipment shall constitute Proceeds hereunder. In the event Lessor is unable (i) to repossess the Equipment for any reason whatsoever including, without limitation, the voluntary or involuntary bankruptcy of the Lessee or the rights of any user of the Equipment under any agreement whatsoever, or (ii) to sell the Equipment upon the expiration of ninety (90) days of the date of the Event of Default, the Proceeds of such Equipment shall equal zero for purposes of this Section. The amount payable by the Guarantor under this Guaranty shall be (i) the Obligation Amount, as set forth on Exhibit A attached hereto, for the date appearing on such Exhibit which next follows the date the Proceeds are realized by the Lessor (the "Payment Date") plus (ii) any Monthly Rent and other amounts due and payable under the Lease Agreement accruing from the date of the Event of Default to the Payment Date (the "Accrued Amounts") plus (iii) any amounts due from the Guarantor pursuant to Section 2 above (the "Additional Amounts") less (iv) the Proceeds less (v) any amounts received by Lessor in connection with any collateral (the "Collateral Amounts") pledged to the Lessor by the Lessee or by any of the Lessee's affiliates. In the event the Proceeds and the Collateral Amounts received by the Lessor exceed the Obligation Amount paid to Lessor, such excess shall be paid over to the Guarantor after deducting therefrom the Accrued Amounts and any Additional Amounts. Upon such payment, the Lessor shall transfer to the Guarantor all of the Lessor's right, title, and interest in and to (x) any Equipment not purchased by a third party, "AS IS", "WHERE IS", "WITH ALL FAULTS" AND WITH NO WARRANTIES WHATSOEVER EITHER EXPRESSED OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE OR FOR ANY PARTICULAR PURPOSE, (y) the Lease Agreement and all of the Lessor's rights thereunder without recourse, and (z) any Security Agreement and the rights to any Collateral defined therein granted to the Lessor by the Lessee, or by any affiliate of the Lessee, in order to secure the Lessee's obligations under the Lease Agreement. Each payment made by the Guarantor hereunder, which is applied against ~~the~~ Obligations referred to in clause (i) above, shall reduce such

liability by a like amount. The Lessee's liability to the Lessor is not affected by any limitation in this Guaranty.

4. WAIVERS BY GUARANTOR; LESSOR'S FREEDOM TO ACT. The Guarantor agrees that the Obligations will be paid and performed strictly in accordance with their respective terms regardless of any law, regulation or order, now or hereafter in effect in any jurisdiction which affects any term or provision of such Obligations or the rights of the Lessor with respect thereto. The Guarantor waives presentment, demand, protest, notice of acceptance, notice of Obligations incurred and all other notices of any kind, all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar law, now or hereafter in effect, any right to require the marshalling of assets of the Lessee, and all suretyship defenses generally. Without limiting the generality of the foregoing, the Guarantor agrees to the provisions of any instrument evidencing, securing or otherwise executed in connection with any Obligation and agrees that the obligations of the Guarantor under this Guaranty shall not be released or discharged, in whole or in part, or otherwise affected by (i) the failure of the Lessor to assert any claim or demand or to enforce any right or remedy against the Lessee except as set forth in Section 3 above, (ii) any extensions or renewals of any Obligation, including, without limitation, the leasing of additional equipment to Lessee or the entering into additional leases with Lessee, (iii) any rescissions, waivers, amendments or modifications of any of the terms or provisions of any agreement evidencing, securing or otherwise executed in connection with any Obligation, (iv) the adequacy of any rights the Lessor may have against any collateral or other means of obtaining repayment of the Obligations, (v) the impairment of any collateral securing the Obligations including, without limitation, the failure to perfect or to preserve any rights the Lessor might have in such collateral, or the substitution, exchange, surrender, release, loss or destruction of any such collateral, or (vi) any other act or omission which might, in any manner or to any extent, vary the risk of the Guarantor or otherwise operate as a release or discharge of the Guarantor, all of which may be done without notice to the Guarantor.

5. UNENFORCEABILITY OF OBLIGATIONS AGAINST LESSEE. If for any reason the Lessee has no legal existence or is under no legal obligation to discharge any of the Obligations, or if any of the Obligations have become irrecoverable from the Lessee by operation of law or for any other reason, this Guaranty shall nevertheless be binding on the Guarantor to the same extent as if the Guarantor, at all times, had been the principal obligor on all such Obligations. In the event that any acceleration of the time for payment of the Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Lessee, or for any other reason, all such amounts, which may otherwise be subject to acceleration under the terms of any agreement evidencing, securing or otherwise executed in connection with any Obligation, shall be immediately due and payable by the Guarantor.

6. SUBROGATION; SUBORDINATION. Until the payment and performance in full of all Obligations, the Guarantor shall not exercise any rights against the Lessee arising as a result of any payment by the Guarantor under this Guaranty, by way of subrogation or otherwise, and will not assert or prove any claim in competition with the Lessor or its affiliates with respect to any payment hereunder in bankruptcy or insolvency proceedings of any nature; the Guarantor will not claim any set-off or counterclaim against the Lessee with respect to any liability of the Guarantor to the Lessee; and the Guarantor waives any benefit of and any right to participate in any collateral which may

be held by the Lessor or any affiliate of Lessor. The payment of any amounts due with respect to any indebtedness of the Lessee, now or hereafter held by the Guarantor, is hereby subordinated to the prior payment in full of the Obligations, provided, however, that the Guarantor may accept scheduled payments of any amounts due from Lessee, as set forth in the documents evidencing such indebtedness, prior to a default in the payment and performance of the Obligations. The Guarantor agrees that, after the occurrence of any default in the payment or performance of the Obligations, the Guarantor will not demand, sue for or otherwise attempt to collect any such indebtedness of the Lessee to the Guarantor until the Obligations shall have been paid in full. If, notwithstanding the foregoing sentence, the Guarantor shall collect, enforce or receive any amounts with respect to such indebtedness, such amounts shall be collected, enforced and received by the Guarantor, as trustee for the Lessor, and shall be paid over to the Lessor on account of the Obligations, without affecting in any manner the liability of the Guarantor under the other provisions of this Guaranty.

7. SECURITY; SET-OFF. The Guarantor grants to the Lessor, as security for the full and punctual payment and performance of the Guarantor's obligations hereunder, a continuing lien on and security interest in all securities or other property belonging to the Guarantor now or hereafter held by the Bank of Boston and in all deposits (general or special, time or demand, provisional or final) and other sums which are credited by or due from either the Lessor or the Bank of Boston to the Guarantor or which are subject to withdrawal by the Guarantor; and regardless of the adequacy of any collateral or other means of obtaining repayment of the Obligations, the Lessor is hereby authorized, at any time and from time to time, without notice to the Guarantor (any such notice being expressly waived by the Guarantor), and to the fullest extent permitted by law, to set off and to apply such deposits and other sums against the obligations of the Guarantor under this Guaranty, whether or not the Lessor shall have made any demand under this Guaranty.

8. FURTHER ASSURANCES. The Guarantor agrees that it will, from time to time at the request of the Lessor, provide to the Lessor its most recent audited and unaudited balance sheets and related statements of income and changes in financial condition (prepared on a consolidated basis with the Guarantor's subsidiaries, if any) and such other information relating to the business and affairs of the Guarantor as the Lessor may reasonably request. The Guarantor also agrees to do all such things and execute all such documents, including financing statements, as the Lessor may consider necessary or desirable to give full effect to this Guaranty and to perfect and preserve the rights and powers of the Lessor under this Guaranty.

9. TERMINATION; REINSTATEMENT. This Guaranty shall remain in full force and effect until the Lessor is given written notice of the Guarantor's intention to discontinue this Guaranty, notwithstanding any intermediate or temporary payment or settlement of the whole or any part of the Obligations. No such notice shall be effective unless it is received and acknowledged by an officer of the Lessor at its principal place of business. No such notice shall affect any rights of the Lessor under this Guaranty or of any affiliate of Lessor including, without limitation, rights with respect to (i) Obligations incurred prior to the receipt of such notice, (ii) Obligations incurred after receipt of such notice but pursuant to a contract or commitment in existence prior to such receipt, and (iii) all equipment schedules, leases, instruments, documents, invoices, bills of sale, and writings made by or for

the account of the Lessee with the Lessor or with any of its agents or employees, purporting to be dated on or before the date of the receipt of such notice, although presented to, paid or accepted by the Lessor after that date, all of which shall constitute part of the Obligations. This Guaranty shall continue to be effective, or shall be reinstated in the event of any notice of termination, if, at any time, any payment made or value received with respect to the Obligations is rescinded or must otherwise be returned by the Lessor to the Lessee, or to any other person or entity, upon the insolvency, bankruptcy or reorganization of the Lessee or of any other guarantor of the Obligations, or otherwise, all as though such payment had not been made or value received.

10. SUCCESSORS AND ASSIGNS. This Guaranty shall be binding upon the Guarantor, its successors and assigns, shall inure to the benefit of and be enforceable by the Lessor and its successors, transferees and assigns. Without limiting the generality of the foregoing sentence, the Lessor may assign or otherwise transfer the Lease Agreement, any other lease agreement with the Lessee, any equipment subject thereto, or other agreement held by it evidencing, securing or otherwise executed in connection with the Obligations, or sell participations in any interest in such Obligations, to any other person or entity, and such other person or entity shall thereupon become vested, to the extent set forth in the agreement evidencing such assignment, transfer or participation, with all the rights with respect thereto granted to the Lessor in this Guaranty.

11. AMENDMENTS AND WAIVERS. No amendment or waiver of any provision of this Guaranty nor any consent to any departure by the Guarantor from any provision of this Guaranty shall be effective unless the same shall be in writing and signed by the Lessor. No failure on the part of the Lessor to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

12. NOTICES. All notices and other communications required or permitted under this Guaranty shall be made in writing and, unless otherwise specifically provided herein, shall be deemed to have been duly made or given when delivered by hand or mailed first class mail, postage prepaid, addressed to the other party at its principal place of business as set forth at the beginning of this Guaranty, or at such address as either party may designate in writing.

13. GOVERNING LAW; CONSENT TO JURISDICTION. This Guaranty is intended to take effect as a sealed instrument and shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to any conflict of laws provisions thereof. The Guarantor agrees that any suit for the enforcement of this Guaranty may be brought in the courts of the State of New York or any Federal Court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Guarantor by mail at the address specified in Section 12 hereof. The Guarantor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit was brought in an inconvenient court.